

REMARKS

Claims 1-37 are pending.

Applicant would like to thank the Examiner for indicating that claims 7, 13-16, 19-20, 22-30, and 36-37 contain allowable subject matter.¹

The Examiner has rejected claims 1-6, 8, and 31-34 under 35 U.S.C. § 102(e) as being anticipated by Gross, rejected claims 9-12 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Gross in view of Yip, and rejected claims 17-18 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Gross in view of Yip and further in view of Surazski. Applicant respectfully traverses these rejections.

The claims are directed to techniques for optimizing real-time communication that includes "approximating the bandwidth available on the network based on the difference in arrival times between at least one of the meaningful control packets and at least one of the dummy control packets," as recited, for example, in claim 1. Because applicant's technique approximates bandwidth using both meaningful control packets and dummy control packets, the overhead of determining the bandwidth is less than conventional techniques that use only special-purpose packets whose only purpose is to determine the bandwidth.

Gross describes a technique for determining bandwidth that uses special-purpose "test packets." Gross describes of that "traffic packet bursts" are sent simultaneously from multiple nodes through a segment whose bandwidth is to be determined. According to Gross,

each packet burst comprises multiple packets spaced closely together. The size of packets within the packet burst is preferably chosen to be close to what the average packet size would be for normal network traffic.... Traffic other than the test packet burst used in the test should not be presented

¹ In the Office Action Summary, the Examiner indicated that claims 32-34 are objected to, but not rejected. Applicant assumes that the Examiner intended to indicate that claims 32-34 are rejected.

during the test. Optionally, to avoid causing excessive disruption in normal network traffic, all burst traffic may be marked as high-priority...

(Gross, ¶ 28, emphasis added.) It is thus clear that Gross distinguishes between the test packets of a "test packet burst" and the normal packets of "normal network traffic." Gross describes that the bandwidth for a segment is derived from the time difference in the first and last packet of a test packet burst. (Gross, ¶ 39.)

Thus, Gross only describes that the bandwidth is determined from the test packet and neither teaches nor suggests that the bandwidth can be determined from a combination of test packets and normal packets.

Based upon these remarks, applicant respectfully requests reconsideration of this application and its early allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-8548.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 418268899US from which the undersigned is authorized to draw.

Dated: 12/22/05

Respectfully submitted,

By Maurice J. Pirio

Maurice J. Pirio

Registration No.: 33,273

PERKINS COIE LLP

P.O. Box 1247

Seattle, Washington 98111-1247

(206) 359-8548

(206) 359-9548 (fax)

Attorney for Applicant